

**IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	CIV-12-1056-R
)	
WARDEN FIGUEROA, et al.,)	
)	
Defendant.)	

ORDER

Plaintiff, a California state prisoner appearing *pro se*, filed this action alleging violation of his rights during his confinement. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for preliminary review. On April 28, 2014, Judge Erwin issued a Report and Recommendation wherein he recommended that the action be dismissed without prejudice and without leave to amend. He issued an addendum to the Report and Recommendation on April 29, 2014, extending Plaintiff's time to object to May 16, 2014. The matter is currently before the Court on Plaintiff's timely objection to the Report and Recommendation.

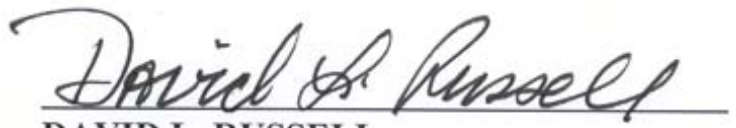
Judge Erwin's recommendation was based on Plaintiff's failure to exhaust his administrative remedies via the procedure established by the California Department of Corrections. Plaintiff does not contend Judge Erwin applied the incorrect law or that he drew erroneous factual conclusions from the information presented by the parties. Rather, he contends that "[a]t no time did the administration demonstrate a genuine willingness to address Plaintiff's demand for compensation for his injuries although the administration was

fully aware that such relief was sought." He contends Department of Corrections officials were more concerned with erecting barriers than addressing his complaints.

The Court concurs with Judge Erwin's recommendation that this action be dismissed without prejudice, and further that leave to amend be denied. As noted by Judge Erwin, any attempt by Plaintiff to reintroduce claims pursuant to 42 U.S.C. § 1983 would fail for the same reason, that is because Plaintiff did not exhaust as required by 42 U.S.C. § 1997e(a).

For the reasons set forth herein, the Report and Recommendation is hereby ADOPTED in its entirety and this action is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 20th day of May, 2014.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE